

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

PECONIC BAYKEEPER, INC. and SAVE THE  
SOUND, INC.,

Plaintiffs,

v.

ERIK KULLESEID, in his official capacity as  
Commissioner of the New York State Office of  
Parks, Recreation, and Historic Preservation,

Defendant.

For Online Publication Only

~~[PROPOSED]~~ ORDER VACATING  
REPORTS AND  
RECOMMENDATIONS

Case No. 2:13-cv-06261 (JMA) (LGD)

**AZRACK, United States District Judge:**

On November 8, 2013, Plaintiffs Peconic Baykeeper, Inc. and Soundkeeper, Inc. (“Plaintiffs”) commenced this action against the Commissioner of the New York State Office of Parks, Recreation, and Historic Preservation (“Defendant”), alleging violations of: (1) the Federal Water Pollution Control Act (the “CWA”), 33 U.S.C. §§ 1251 et seq.; (2) the Safe Drinking Water Act (the “SDWA”), 42 U.S.C. §§ 300f et seq.; and (3) the Resource Conservation and Recovery Act (the “RCRA”), 42 U.S.C. §§ 6901 et seq. (Complaint, ECF No. 1; Amended Complaint, ECF No. 6.)

On June 15, 2018, the parties filed cross-motions for summary judgment. (ECF No. 71, 73.) The motions were referred to the assigned Magistrate Judge for a report and recommendation. (ECF No. 78.) Magistrate Judge Steven I. Locke ultimately issued three Reports and Recommendations (“R&Rs”) recommending that summary judgment be denied to both sides with respect to Plaintiffs’ CWA and RCRA claims, and that summary judgment be granted to Defendant with respect to Plaintiffs’ SDWA claim. (ECF Nos. 81, 93, 109.)

Plaintiffs objected, *inter alia*, to the Magistrate’s recommendation that the SDWA claim be dismissed. (ECF Nos. 97, 110.) In addition, the United States Environmental Protection Agency (“EPA”) filed a Statement of Interest objecting on the grounds that “the R&R’s interpretation of the Safe Drinking Water Act (‘SDWA’), 42 U.S.C. § 300f *et seq.*, is contrary to the statute and EPA’s regulations implementing the Underground Injection Control (“UIC”) Program,” and “request[ing] requests that the Court correct the legal error in the R&R, which misinterpreted the SDWA’s endangerment standard.” ECF No. 103 at 1; *see also* ECF No. 111 (EPA objecting to 2022 R&R, ECF No. 109, on same grounds).

On June 26, 2023, Plaintiffs and Defendant jointly filed a motion for entry of a proposed Consent Judgment, which fully resolves this action. The Court has issued a separate order granting that motion and entering the Consent Judgment. In connection with their settlement, Plaintiffs and Defendant have also jointly filed a motion requesting an order vacating as moot the three Reports and Recommendations issued in this action. EPA has indicated to the Court that it supports the parties’ request to vacate the Reports and Recommendations.

Accordingly, the motion to vacate the Reports and Recommendations is hereby **GRANTED**. The Reports and Recommendations, ECF Nos. 81, 93, 109, are hereby **VACATED**.

**SO ORDERED.**

Dated: July 12, 2023

Central Islip, New York

/s/ JMA

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JOAN M. AZRACK  
UNITED STATES DISTRICT JUDGE